

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

---

IN RE: NATIONAL FOOTBALL LEAGUE  
PLAYERS' CONCUSSION INJURY  
LITIGATION

---

Kevin Turner and Shawn Wooden,  
*on behalf of themselves and others  
similarly situated,*

Plaintiffs,

v.

National Football League and  
NFL Properties LLC, successor-in-interest to  
NFL Properties, Inc.,

Defendants.

---

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody, U.S.D.J.

**NOTICE OF SUBSEQUENT AUTHORITY**  
**RELATING TO CLASS COUNSEL'S MOTION TO WITHHOLD (DKT. 8470)**

Objector Thrivest Specialty Funding, LLC ("Thrivest") hereby provides notice to the Court of a subsequently decided judicial opinion from the United States Court of Appeals for the Third Circuit that is relevant to and supports Thrivest's opposition to Class Counsel's "Motion to Withhold Portions of Class Members Monetary Awards Purportedly Owed to Certain Third-Party Lenders" (the "Motion to Withhold," Dkt. 8470).

Class Counsel's Motion to Withhold operates from the premise that specialty finance companies, like Thrivest, structured their non-recourse advances to Class Members as assignments so they could charge rates that state usury laws would have prohibited if the transactions were structured as loans. In Obermayer, Rebmann, Maxwell & Hippel v. West, et al., No. 16-1376, 2018 WL 1074310, \*1 (3d Cir., Feb. 27, 2018) (copy enclosed as "Exhibit A"), the Third Circuit reviewed a non-recourse purchase of future litigation proceeds similar to the transactions at issue

in Class Counsel’s Motion to Withhold. Focusing on substance, not form, the Court explained: “a transaction that neither guarantees the lender an absolute right to repayment nor provides it with security for the debt is not a loan, and as a result, cannot be subject to New York’s usury laws.” Id. at \*2. Accordingly, the Third Circuit rejected an argument, in West, that the purchase agreements were unenforceable because they are usurious. See id.

Although not a precedential decision, the Third Circuit’s reasoning is supported by case law and relevant here. **First**, it demonstrates the flaw in Class Counsel’s premise. Even if structured as a loan, Thrivest’s non-recourse advance would not have been subject to usury laws because, if Thrivest’s Class Member customers do not recover from the settlement of this action, they are not obligated to repay Thrivest any money—there is no “absolute right to repayment.” Thus, the Court should reject Class Counsel’s suggestion that Thrivest packaged its transactions as assignments, rather than as loans, to avoid regulatory oversight—a conclusion that is inconsistent with the law and with Thrivest’s reasonable rates. **Second**, implicit in the Third Circuit’s reasoning is a recognition that higher rates are justified where repayment is not guaranteed and recourse is limited. As such, it is unfair to compare Thrivest’s rates (which are among the lowest for non-recourse transactions and lower even than some recourse lenders) with those charged by lenders whose loans must be repaid in full regardless of whether a Class Member’s claim is approved and even if the settlement proceeds are insufficient to satisfy the obligation.

Thrivest respectfully requests that the Court consider this new authority as it reviews Class Counsel's pending Motion to Withhold.

Respectfully submitted,

A handwritten signature in black ink, reading "Peter C. Buckley". The signature is written in a cursive style with a horizontal line underneath the name.

---

Peter C. Buckley, Esquire  
Mark J. Fanelli, Esquire  
Attorney ID Nos. 93123, 321283  
FOX ROTHSCHILD LLP  
2000 Market Street, 20<sup>th</sup> Floor  
Philadelphia, Pennsylvania 19103-3222  
Tel: (215) 299-2854  
Fax: (215) 299-2150  
pbuckley@foxrothschild.com

*Attorneys for Thrivest Specialty Funding, LLC*

Dated: March 8, 2018

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

---

IN RE: NATIONAL FOOTBALL LEAGUE  
PLAYERS' CONCUSSION INJURY  
LITIGATION

---

Kevin Turner and Shawn Wooden,  
*on behalf of themselves and others  
similarly situated,*

Plaintiffs,

v.

National Football League and  
NFL Properties LLC, successor-in-interest to  
NFL Properties, Inc.,

Defendants.

---

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody, U.S.D.J.

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I served a true and correct copy of the foregoing Notice of Subsequent Authority on all counsel of record via the Court's ECF system. I further hereby certify that on this date, I served a true and correct copy of the foregoing on the following interested parties via e-mail:

Raul J. Sloezen, Esq.  
Law Offices of Raul J. Sloezen, Esq.  
130 Sycamore Road  
Clifton, New Jersey 07012  
rjsloesen@outlook.com  
*Counsel for Atlas entities*

Pravati Legal Funding/Pravati Capital  
4400 N. Scottsdale Rd  
#9277  
Scottsdale, AZ 85251  
William P. Bray  
Bray & Long, PLLC  
2820 Selwyn Avenue, Suite 400

James Kim  
Ballard Spahr LLP  
919 Third Avenue, 37th Floor  
New York, NY 10022  
kimj@ballardspahr.com  
*Counsel of Record in CFPB v. Top Notch II,  
LLC, e.t. al. (S.D.N.Y. 1:17-cv-07114-GHW)*

Top Notch Funding/Top Notch Lawsuit Loans  
c/o The Company Corporation  
251 Little Falls Drive  
Wilmington, DE 19808

Charlotte, North Carolina 28209  
wbray@braylong.com  
*Counsel for Global Financial Credit, LLC*

Cash4Cases, Inc.  
228 Park Avenue South  
New York, NY 10003  
Martin L. Black  
4909 N. Monroe Street  
Tallahassee, FL 32303  
mbmblack8@gmail.com  
*Counsel for Cambridge entities*

John "Jack" M. Robb, III  
LeClairRyan  
919 East Main Street  
24<sup>th</sup> Floor  
Richmond, VA 23219  
john.rob主@leclairryan.com  
*Counsel for HMR Funding entities*

Mark S. Melodia  
Nipun J. Patel  
Reed Smith LLP  
Three Logan Square  
Suite 3100  
1717 Arch Street  
Philadelphia, PA 19103  
mmelodia@reedsmith.com  
npatel@reedsmith.com  
*Counsel for Peachtree entities*

Dated: March 8, 2018

/s/ Peter C. Buckley

---